

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
Honolulu, Hawaii

REF:OCCL:DH

CDUA KA-3460

Acceptance Date: April 3, 2008  
180-Day Exp. Date: September 3, 2008

August 8, 2008

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** Conservation District Use Application (CDUA) KA-3460 for Proposed Catherine Moragne Bartmess and Russ Bartmess Single Family Residence (SFR)

**APPLICANT:** Ben Welborn, Landmark Consulting Services, Inc., P.O. Box 915, Hanalei, Hawaii 96714, 808-828-6332

**LANDOWNER:** Catherine Moragne Bartmess and Russ Bartmess, 356 Meridian, Crystal Lake, Illinois, 60014

**LOCATION:** Haena, Island of Kauai

**TMK:** (4) 5-9-005:027

**AREA OF PARCEL/  
USE:** 2,672 square feet  
Same

**SUBZONE:** Limited

**DESCRIPTION OF AREA/CURRENT USE:**

The proposed project is located on a 15,030 square foot (9,724 square foot pending Shoreline Certification) parcel TMK: (4) 5-9-002:057, in Haena, Island of Kauai. Access to the parcel is provided by Kuhio Highway. The subject parcel is bounded on the south by Kuhio Highway, to the north by the ocean, and to the east and west by private landowners. The parcel is located in the State Land Use (SLU) Conservation District, Limited subzone (**Exhibits 1, 2 & 3**).

**PROPOSED PROJECT:**

The applicants, Catherine Moragne Bartmess and Russ Bartmess, propose to construct a SFR in Haena, Kauai, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR), L-6, SINGLE FAMILY RESIDENCES, D-1, "a single family residence in a floodplain or coastal high hazard area that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter."

The applicant proposes to build a 2,672 square foot elevated SFR, which includes a 538 square foot enclosed multiple level stairwell and entry way, 1,894 square foot of living space, and a 240 square foot deck. The living space consists of three (3) bedrooms, three (3) bathrooms, kitchen, and dining/family room. The SFR's architecture is a plantation design and will be painted in earth tone colors. Additional landscaping is proposed consisting of groundcovers, ornamentals, shrubs, and various trees (**Exhibit 4**).

Existing vegetation consist of an open lawn with a few coconut trees. The applicant notes there are no rare or endangered native plants and/or animals present on the subject parcel.

The applicant notes an Archaeological Assessment of the subject property was conducted. Two adz fragments were recovered from the surface layer in the mauka portion of one of the investigative trenches, which were most likely transported by wave action and/or gardening activities. The State Historic Preservation Division noted via letter (dated October 25, 2007) that no further archeological work was necessary on the subject parcel. Utilities, such as, electrical, water, refuse collection, telephone, cable, and natural gas services are available to the property. Wastewater will be treated by an individual wastewater system septic tank.

Staff notes the proposed SFR was to be located closer to the shoreline, but in subsequent discussions with the applicant they have agreed to move the SFR back 80 feet from the shoreline. The applicant is also asking for a variance to the Minimum side yard setback due to the relocation of the residence. The proposed SFR will not meet the required minimum setback of fifteen feet on the side yards. Thus, the BLNR will need to grant a variance to the Minimum Setbacks based on site characteristics, lot shape, and the effort on the part of the applicant to place the structure as far landward on the parcel as possible.

The SFR is located in the State Land Use (SLU) Conservation District, Limited subzone, and in a coastal high hazard area. On Flood Insurance Rate Map (FIRM) Panel 15000-20030-E (dated September 6, 2005), the subject parcel is located within Flood Zone VE 30, which is designated as a coastal flood area with a velocity hazard due to its potential susceptibility to 100-year inundation by tsunami; Base Flood Elevations (BFE) have been determined at thirty (30) feet above mean sea level (MSL).

The existing grade of the subject parcel is approximately 15.6 above MSL, thus the finished floor height of the building will be approximately 14.4 feet above the existing grade in order to comply with federal flood standards. This would allow the applicant to construct the enclosed living areas, and overlying roof structure of the SFR within a fifteen (15) foot building height envelope above the minimum MSL floor elevation as required by flood elevations. Therefore,

the SFR will have a maximum height limit of thirty (30) feet to meet Federal and County flood regulations.

Therefore, the applicant is requesting a variance of five feet from the maximum height limit of twenty-five (25) feet, pursuant to HAR, Chapter 13-5, Section 13-5-41(a), SINGLE FAMILY RESIDENCES; STANDARDS, which notes "the maximum height of the building shall not exceed twenty-five feet, measured from the highest point of the roof structure, down to the lower of the existing or finished grade at the lowest corner of the building."

#### **AGENCY COMMENTS:**

The CDUA was referred for review and comment to the DLNR – Division of Forestry and Wildlife, Kauai Branch - Historic Preservation Division, Engineering Division, Kauai District Land Office, Commission on Water Resource Management, Division of Conservation and Resources Enforcement, State Parks Division, Kauai County Planning Department, County of Kauai Council Services, Office of Hawaiian Affairs, Department of Health, and Office of Environmental Quality Control, Hanalei Haena Community Association, and the Princeville Public Library . The following comments were received:

##### State Parks Division

No Comment.

##### Division of Forestry and Wildlife

No Comment.

##### Commission on Water Resource Management

No Comment.

##### Engineering Division

According to the Flood Insurance Rate Map (FIRM) the project site is located in Zone VE30; the project site must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal regulations whenever developments within a Special Flood Hazard Area is undertaken. For questions about local flood ordinances please contact the County of Kauai, Department of Public Works, NFIP coordinator.

*Applicant Response: we understand the SFR, in both its design and construction, must comply with NFIP rules and regulations, 44CFR, and County of Kauai flood zone ordinance. Construction drawings for a building permit will be submitted to the County of Kauai, Department of Public Works for review to verify the project's compliance with both the Federal and County standards.*

##### Historic Preservation Division

We believe that "no historic properties will be affected" by this undertaking because an accepted archeological inventory survey (AIS) found no historic properties. In the event that historic resources, including human skeletal remains, are identified during routine construction activities,

all work needs to cease in the immediate vicinity of the find, and find needs to be protected from disturbance, and the HPD needs to be contacted.

*Applicant Response: HPD acknowledged the AIS Archaeological report was accepted for the project; no historic properties were found. In the event historic resources, including human skeletal remains (iwi kupuna), are identified during construction activities, all work will cease and HPD shall be contacted.*

#### Office of Hawaiian Affairs

OHA is pleased the applicant intends to re-design the proposed SFR to comply with county side-yard setback variance requirements; we are pleased the applicant has chosen to do this rather than requesting a variance. The applicant also intends to set the SFR back an additional 29 feet beyond the active 70 year erosion zone; we commend this type of planning which will protect the homeowner's property and lessen the State's burden. The project area should be landscaped with drought tolerant native or indigenous species that are common to the area; invasive species should be removed and ornamentals chosen. This will serve as a practical water saving landscape practices, further Hawaiian concept of malama aina, and create a more Hawaiian sense of place. The project should also: 1) ensure that all outdoor lights should be fully shaded or full cut-off styles; 2) uplighting should be avoided; 3) avoid lighting situations where light glare may project upward and/or laterally; 4) avoid large light intensity floodlights located on building tops and poles; 5) use amber, blue, or green colored lights and/or filters to decrease seabird attraction and confusion for honu; 6) use motion detection-activated lights to deter lights for being on extended periods of time; and 7) use earth tone colors for infrastructure. Should iwi or Native Hawaiian cultural deposits be found during ground disturbance, work will cease, and the appropriate agencies will be contacted pursuant to applicable law.

*Applicant Response: In an effort to increase the shoreline setback to 80-feet, we are requesting BLNR approval for a reduction of the standard Conservation District side-yard setbacks to 10-feet. The trade off will afford the shoreline and public resources greater protection. OHA's input regarding landscaping and the use of native, indigenous and/or drought tolerant plant species is acknowledged. We anticipate the use of Beach Naupaka, Dwarf Coco Palms, Hala, Plumeria and other ornamental groundcovers and shrubs. All exterior lighting shall consist of shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upward at trees or structures shall not be utilized. The exterior colors shall be in medium to dark earth tones. Should iwi kupuna or other cultural artifacts be exposed during construction, all work shall stop in the immediate vicinity and the HPD shall be contacted for mitigation protocol.*

#### Hanalei Haena Community Association

The Hanalei Haena Community Association notes the CDUA and FEA should state the following: 1) the temporary sandbags that have artificially fixed the shoreline and have restricted the natural migration of the shoreline will be removed as a precondition to any development and no shoreline hardening, sandbags or other structures will be allowed to artificially fix the shoreline for the life of the development; 2) the shoreline setback will comply with the Kauai Shoreline Setback Ordinance No. 863 (setback = 40 feet + 70 annual erosion rate); 3) any approved development must allow the natural littoral processes to proceed unimpeded and protect beach integrity in perpetuity; 4) no fencing may be installed within 40 feet of the

shoreline (consistent with Ordinance No. 863); 5) the approval of any development will be conditioned upon provision that will ensure safe lateral access for people traversing the beach in front of the property; 6) no commercial uses (including transient vacation rentals) will be permitted on the property; and 7) the conditions cited above will be incorporated into the deed for the property and filed with the Bureau of Conveyances.

*Applicant Comment: The CDUA and EA address the construction of a new residence on the subject parcel. We feel the CDUA is not the appropriate venue to address issues relative to the sandbag revetment. Thus we are not seeking a permit for the retention of the sandbag revetment.*

*The revetment was approved and constructed in 1997 under a SMA (E)-97-03 by the County of Kauai to protect two older residences on nearby parcels (TMKs 24 & 26) which were threatened by a severe winter storm in 1996. The existing sandbag revetment spans a distance of approximately 400 linear feet and encompasses the shoreline boundaries of five (5) contiguous parcels; TMKs (4) 5-09-05: 23, 24, 25, 26 & 27 (Moragne/Bartmess parcel). Thus the revetment was engineered, approved and constructed as a single structure. Even though there was no structure on the Moragne/Bartmess parcel it was (and is) necessary to stabilize the shoreline along the adjacent Moragne/Bartmess property, and residences on TMKs 26 & 24.*

*A long-term permitting determination regarding the sandbag revetment should be treated under a separate permitting process and associated EA, a process which should involve all impacted property owners. Any assessment of the revetment and decision to retain or remove the sandbag revetment should be made with notice and input from the other owners. Lastly, before any long term decisions are made with regard to the revetment, additional statistical monitoring of the shoreline and littoral beach cell are necessary to develop a comprehensive science-based understanding of the entire littoral cell, and to better quantify what effect the revetment is having upon the seasonal dynamics of the beach.*

*The proposed residence, with an assumed useful life of 70-years, shall be setback from the shoreline a distance of 80-feet<sup>2</sup>. The structure will be sufficiently buffered from shoreline erosion hazards regardless of whether or not the sandbag revetment (or some other manner of shoreline hardening) is allowed to remain in place.*

*To accommodate the greater 80-foot shoreline setback, and the physical constraints of the narrow parcel, the side-yard setbacks would need to be reduced to 10 feet to allow the 'building envelope' or the residence; the setback would also require an architectural redesign of the residence. The proposed development of the residence, set back a statistically conservative distance from the certified shoreline, shall not impede natural littoral beach processes in any manner over the anticipated useful life of the structure.*

*We are aware of Kauai Shoreline Setback and Coastal Protection Ordinance No. 863. Lateral access along the shoreline shall be preserved by the manner of residential development and shoreline setback as proposed. As a standard condition of CDUA approval, the BLNR restricts commercial uses, including transient vacation rental use within the Conservation District. All conditions imposed by the BLNR in the issuance of any CDUP will be required to be recorded with the deed to the property.*

Department of Health

The subject parcel is located in the Critical Wastewater Disposal Area (CWDA); an area where no new cesspools will be allowed. DOH notes an individual wastewater system (IWS) is allowable on the property. However, it appears that the property maybe located within a 1,000 foot radius of a potable well and/or high groundwater elevations. If the IWS cannot meet the 1,000 foot radius setback distance requirement from the potable well, an aerobic unit, chlorinator and horizontal soil absorption bed will be required. If it is determined that the IWS can be installed to meet the setback distance from a potable well, but will be located in high groundwater, an aerobic unit may still be required. If neither condition exists, a septic tank will be allowed. In addition, the effluent disposal component of the IWS shall have a minimum horizontal distance of 50 feet from the ocean at the vegetation line. All wastewater plans must meet the department's rules, HAR, Chapter 11-62 "Wastewater Systems." We reserve the right to review the detailed wastewater plans for conformance to applicable rules. Please review all standard comments on the website: [www.hawaii.gov/health/emvironmental/env-planning/landuse.html](http://www.hawaii.gov/health/emvironmental/env-planning/landuse.html).

*Applicant Comment: we understand the project parcel is located in a CWDA and a new cesspool will not be allowed. We are aware the property may be located within 1,000 feet of a potable public drinking water source. Depending upon the distance to the well, the depth at which ground water is encountered, and the results of a percolation test, we understand we may be required to install an aerobic IWS, a chlorinator, and a horizontal soil absorption system. We acknowledge the minimum setback distance of 50 feet from the certified shoreline for the IWS. We will submit a wastewater plan in accordance with HAR, Chapter 11-62 "Wastewater Systems" to the DOH, Wastewater Branch for review and approval. The Standard Comments section of the DOH website were reviewed to assess the environmental impacts of the proposed Moragne/Bartmess residence with respect to the EPO guidelines; a Finding of No Significant Impact (FONSI) is anticipated for this action.*

**ANALYSIS:**

Following review and acceptance for processing, the applicant was notified, by letter dated April 3, 2008 that:

1. The proposed use is an identified land use (L-6, SINGLE FAMILY RESIDENCES, D-1) within the Limited Subzone of the Conservation District, according to Section 13-5-23, Hawaii Administrative Rules (HAR); please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to Section 13-5-40(a), HAR, a public hearing will not be required; and
3. In conformance with Chapter 343, (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment (DEA) for the project will be submitted to OEQC to be published in the April 23, 2008 issue of the Environmental Notice.

Staff notes the FONSI was published in the OEQC's Environmental Notice on July 23, 2008. Staff notes the FEA can be challenged until August 23, 2008, thus CDUA approval is subject to a 29-day waiting period.

### 13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff is of the opinion that the proposed action will increase structural density on a vacant parcel, however the Haena area has been developed with residential structures due to the 1967 court ordered subdivision and the subsequent BLNR policy of allowing one house per lot. Thus, the action is consistent with the existing uses and with the purpose of the Conservation District in this location. The area's natural resources will be preserved and potential impacts will be minimized, with mitigation measures.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities.

Staff notes the proposed SFR is an identified land use within the Limited subzone, which is restrictive in nature regarding land use development. However, Staff notes that the proposed project has met the restrictive criteria and that adequate mitigation measures have been taken to the protected natural resources of the coastal area. The proposed SFR will need to obtain the BLNR's approval for a variance from the maximum height limit and the minimum side yard setbacks, in order to mitigate potential flooding and erosion. In addition, the applicant will be required to sign and file an indemnity statement due to the potential coastal hazards attendant to the site.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The Kauai County Planning Department notes the proposed project lies within the Special Management Area (SMA), but the construction of a SFR's is exempt from the County's SMA Regulations.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented. The site is currently landscaped but the applicant is proposing native landscaping. Staff notes that the proposed project will not detract from the rural character of the area, which is already developed with residential structures.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed SFR will fit into the locality and surrounding areas since the area is currently developed with single-family residences.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

## **DISCUSSION:**

Staff reiterates that the Board of Land Natural Resources (BLNR) 1981 policy that allows single-family residential use in the partitioned area located in the Limited subzone known as the "Haena Hui Subdivision." Haena Hui is different than other areas within the Conservation District due to its unique history.

In 1967, the Kauai Courts approved the Haena Hui Subdivision. This was done without the consent of the BLNR. The BLNR considered this issue in 1980 and determined that the individuals involved acted in good faith by applying to and following the dictates of the courts in the matter, albeit the oversight of the BLNR's requirements to first obtain a permit for



subdivision. Following this chain of events, the BLNR adopted a policy that residential lots within Haena Hui subdivision (save for certain lots with poor developmental qualities, such as some beach lots) would qualify for one residential structure, subject to some special and standard conditions, which are herein incorporated.

Notwithstanding this policy, and notwithstanding a change in the policy by the BLNR, the BLNR still retains its discretionary authority over all matters with respect to land use within the Conservation District

The proposed use is an identified land use, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR), L-6, SINGLE FAMILY RESIDENCES, D-1." The applicant proposes to build a 2,672 square foot elevated SFR, which includes a 538 square foot enclosed multiple level stairwell and entry way, 1,894 square foot of living space, 240 square foot deck. The living space consists of three (3) bedrooms, three (3) bathrooms, kitchen, and dining/family room. Staff notes the proposed SFR is still less than the maximum allowable size for a residence on a lot of one acre or less in the Conservation District, which is 3,500 square feet.

The applicant will preserve the natural beauty and open space characteristics of the subject parcel around the SFR with appropriate building design and landscaping, thus staff is of the opinion that the proposed SFR will not result in substantial adverse impacts to natural resources. However, staff notes should further landscaping occur that the applicant receive our approval, prior to construction.

Staff notes the SFR was originally proposed to be located closer to the shoreline and had a different design configuration, but in subsequent discussions with the applicant they have agreed to redesign and relocate the SFR 80 feet landward of the shoreline. The move will change the proposed SFR footprint and due to the narrowness of the subject parcel a variance of five feet from the minimum side yard setback of 15 feet will be requested. Staff believes the request for the variance is reasonable due to the lot shape, site characteristics, and 80-foot setback of the proposed SFR.

The applicant is also requesting a variance of five feet from the maximum height limit of twenty-five (25) feet, pursuant to HAR, Chapter 13-5, Section 13-5-41(a), SINGLE FAMILY RESIDENCES; STANDARDS, which notes "the maximum height of the building shall not exceed twenty-five feet, measured from the highest point of the roof structure, down to the lower of the existing or finished grade at the lowest corner of the building." Staff recommends the BLNR approve the request for a five foot variance to meet Federal and County flood regulations, pursuant to HAR, Chapter 13-5, Section 13-5-41(a). Similar variances have been granted for single-family residences in Haena.

Staff notes the FONSI was published in the OEQC's Environmental Notice on July 23, 2008. Staff notes the FEA can be challenged until August 23, 2008, thus CDUA approval is subject to a 29-day waiting period.

The applicant is asking for an 18-month start to the construction day versus one year, due to the need to redesign the proposed SFR 80 feet landward, and the associated reconfiguration of the proposed building envelope. Staff notes the standard conditions allow for a one-year deadline to

initiate construction and three years to complete construction. Staff notes that this deviation from the standard condition is warranted to allow the applicant to develop an appropriate design for the single-family residence due to site constraints.

The current plans before the BLNR call for an SFR setback of 80 feet from the certified shoreline. However, the plan is quite general because the applicant was asked to consider a more landward site for the structure. In order to accommodate the request of the OCCL to relocate the structure landward from the shoreline, the relocation of the residence will also require a significant re-design, which is also contingent upon the granting of a variance to the side yard setbacks. Staff notes the applicant is asking for approval of the footprint at this time, but has not yet provided a detailed design. If the BLNR grants the CDUA and the desired variances, the applicant will initiate the detailed design of the residence and submit it to OCCL. Staff recommends to the BLNR that when the applicant submits the final proposed plans a staff submittal of the final plans be submitted to the BLNR for approval. Suffice to say that all other agencies and community groups that haven't seen the SFR design would most likely want an opportunity to comment on new site plans.

Staff notes in December 5, 1996, the County of Kauai issued an Emergency SMA Permit (E)-97-03 to approve temporary shoreline protection for TMK's (4) 5-9-005:23-2 in the form of a sandbag revetment due to a high surf event. Staff notes that the immediate threat to the health and safety to the residents passed after the event. Staff notes there has been sufficient time since the authorization of the issuance the permit by the County of Kauai to develop an alternative erosion control strategy. Staff is concerned: 1) that the subject structure has surpassed the temporary emergency nature (now 12 years old); 2) is concerned with the adherence to the conditions of the emergency SMA related to the shoreline; and 3) about the temporary nature of the structure. Staff notes no significant progress has been made towards this goal.

Staff notes there is a pending Certified Shoreline that still needs to be approved by the Department. Staff notes the Land Division wrote to the County of Kauai, Planning Branch regarding the status of Emergency SMA Permit (E)-97-03 and asked whether the permit was still valid, and authorized (**Exhibit 5**). The County of Kauai Planning Department has not yet responded to the letter, so the issue of the sand bags has yet to be resolved. In any case, staff feels that the applicant located the proposed residence as far landward a possible on the lot to avoid erosion hazards, even if the bags are removed. Staff feels that this application may proceed despite the pending issues regarding the sand bag groin. However, staff would like to make it clear that this action, if approved by the BLNR, in no way legitimizes the sand bag groin.

Staff comments that there is significant potential for fugitive dust to be generated during the proposed action, and may impact nearby residents. It is recommended that a dust control management plan be developed which identifies and addresses those activities that have a potential to generate fugitive dust. In addition, construction activities must comply with provisions of HAR, Section 11-60.1-33 on Fugitive Dust.

Staff notes the contractor should provide adequate means to control dust from road areas and during the various phases of construction activities, including by not limited to: 1) planning the different phases of construction, focusing on minimizing the amount of dust-generating materials

and activities, centralizing material transfer points and on-site vehicular traffic routes, and locating potentially dusty equipment in areas of the least impact; 2) providing an adequate water source at the site prior to start-up of construction activities; 3) landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase; 4) controlling of dust from shoulders, project entrances, and access roads; 5) and providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities.

Therefore, staff recommends the following:

**RECOMMENDATION:**

That the Board of Land and Natural Resources APPROVE CDUA KA-3460 for the proposed Moragne/Bartness Single Family Residence, located in Haena District, Island of Kauai, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
5. Any work or construction to be done on the land shall be initiated within one and a half years of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction must be completed within three and a half years of the approval;
6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;

7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
8. The applicant will use Best Management Practices for the proposed project;
9. The applicant will give preference towards using native plants for the remaining landscape work, and that prior to any construction the applicant will submit a landscape plan for the Office of Conservation and Coastal Land's approval;
10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
14. That the applicant shall execute a waiver and indemnity prior to construction plan approval that is satisfactory to the Department;
15. This action by the Board in no way legitimizes the sand bag groin located on the seaward side of the property, and the Department of Land and Natural Resources has the right to seek the removal of the structure, should the landowner fail to comply with the County of Kauai Emergency SMA Permit (E)-97-03 declarations, or if it is determined that the structure is causing harm to the public beach;
16. That the Board approve the request for a five foot Maximum Height Limit variance to meet Federal and County flood regulations, and a five foot variance from the minimum side yard setbacks to accommodate long-term erosion hazards;
17. That the Board of Land and Natural Resources will review the final proposed plans;
18. That the approval of CDUA KA-3460 is subject to a 29-day waiting period until August 23, 2008 should there be a challenge the FONSI pursuant to Chapter 343, HRS;

19. Other terms and conditions as may be prescribed by the Chairperson; and
20. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,

*Dawn P. Hegger*

Dawn T. Hegger  
Staff Planner

By: *Laura H. Thielen*  
for Laura H. Thielen, Chairperson  
Board of Land and Natural Resources

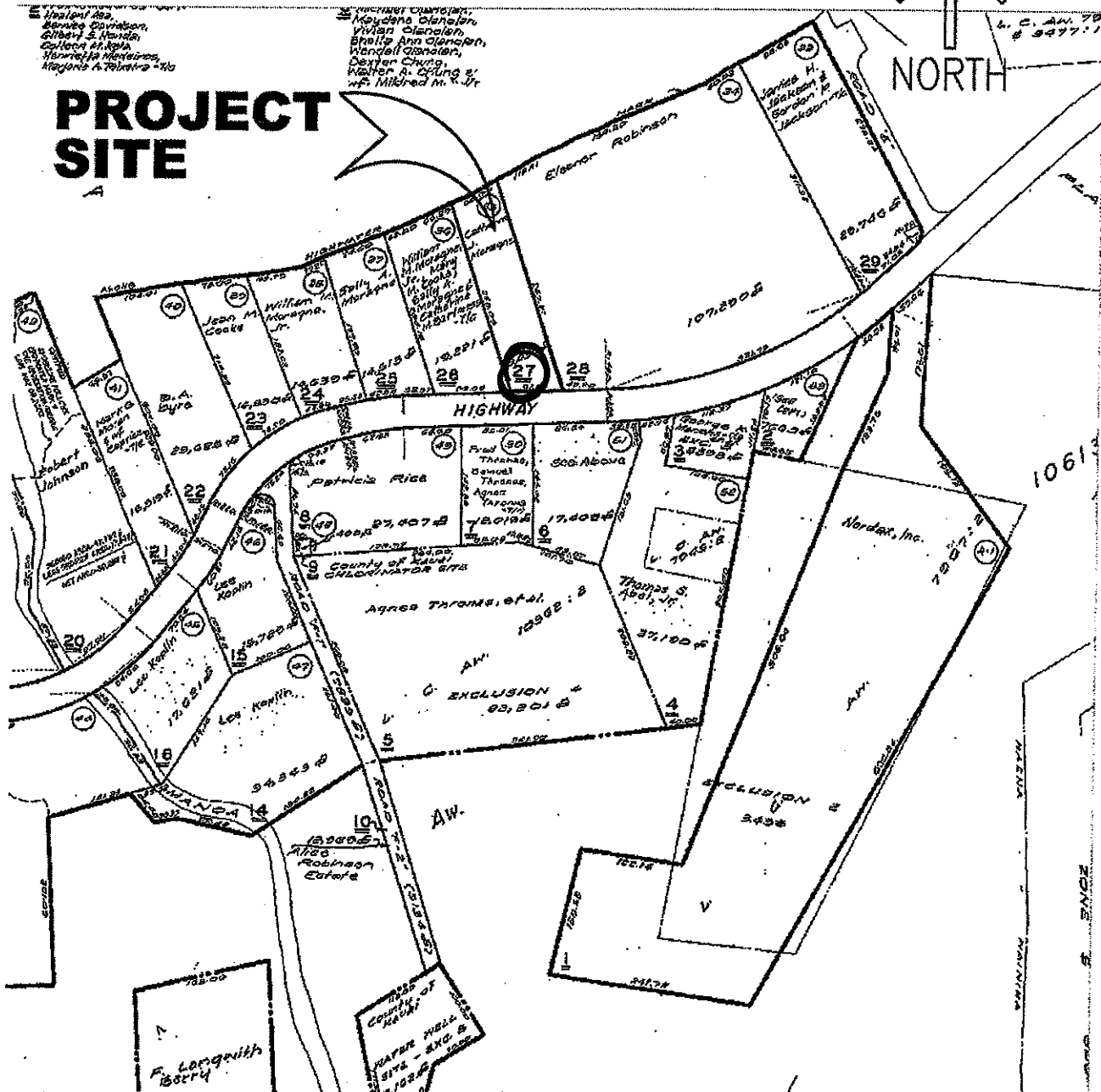
Location proposed SF2 Bartmess  
Trnk: (4) 5-9-51027  
Haena, Kauai





Wagner Engineering Services, Inc.  
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256

**PROJECT  
SITE**



TAX MAP (4) 5-9-05:27  
MORAGNE/BARTMESS SINGLE FAMILY RESIDENCE  
HAENA, KAUAI, HAWAII

SHEET

3

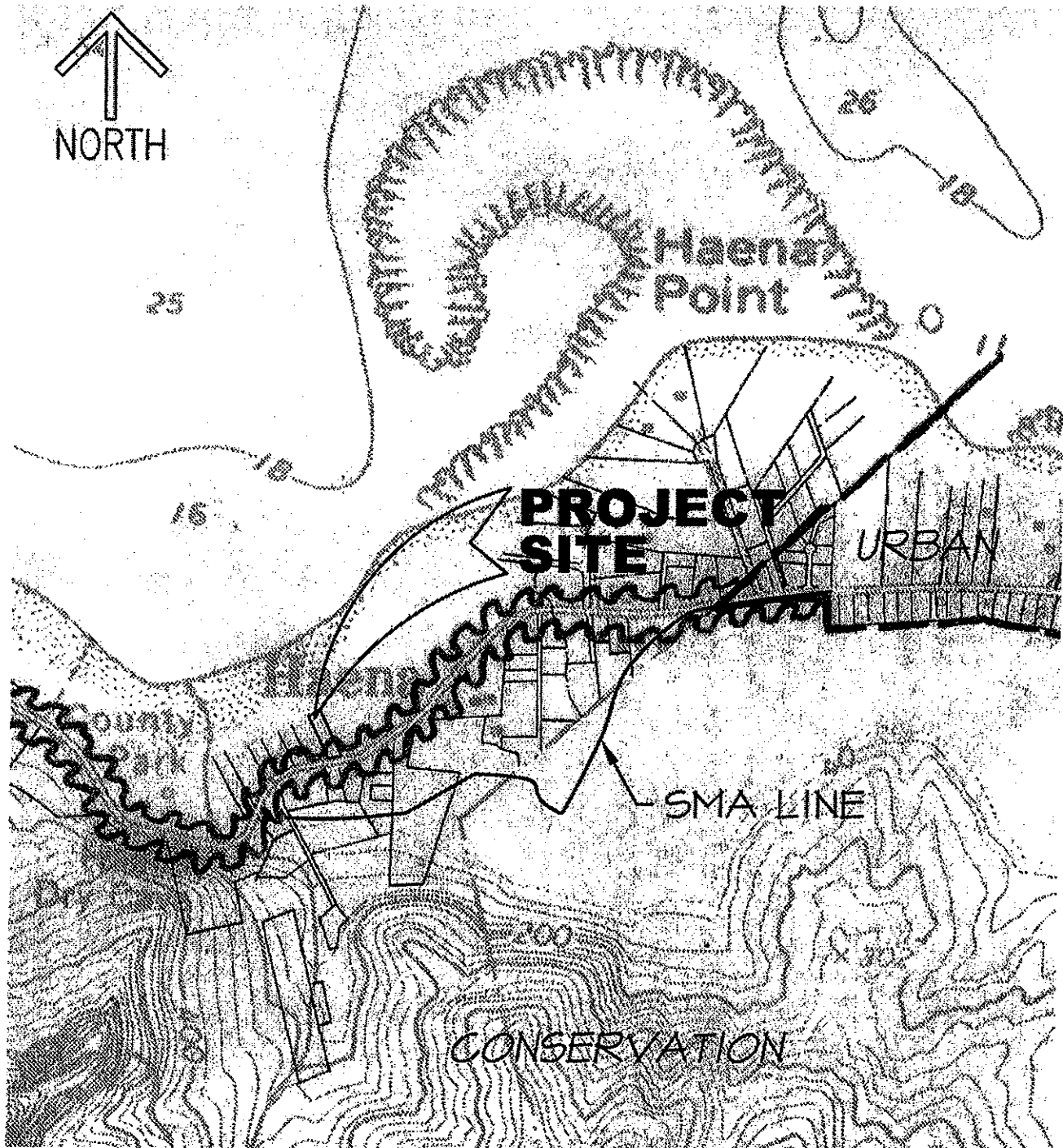
EXHIBIT 3

EXHIBIT 2



Wagner Engineering Services, Inc.

P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



## COUNTY ZONING MAP

MORAGNE/BARTMESS SINGLE FAMILY RESIDENCE

HAENA, KAUAI, HAWAII

T.M.K. (4) 5-9-05:27

SHEET

5

EXHIBIT 5

EXHIBIT 2



EXHIBIT 3

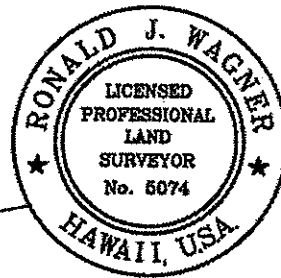
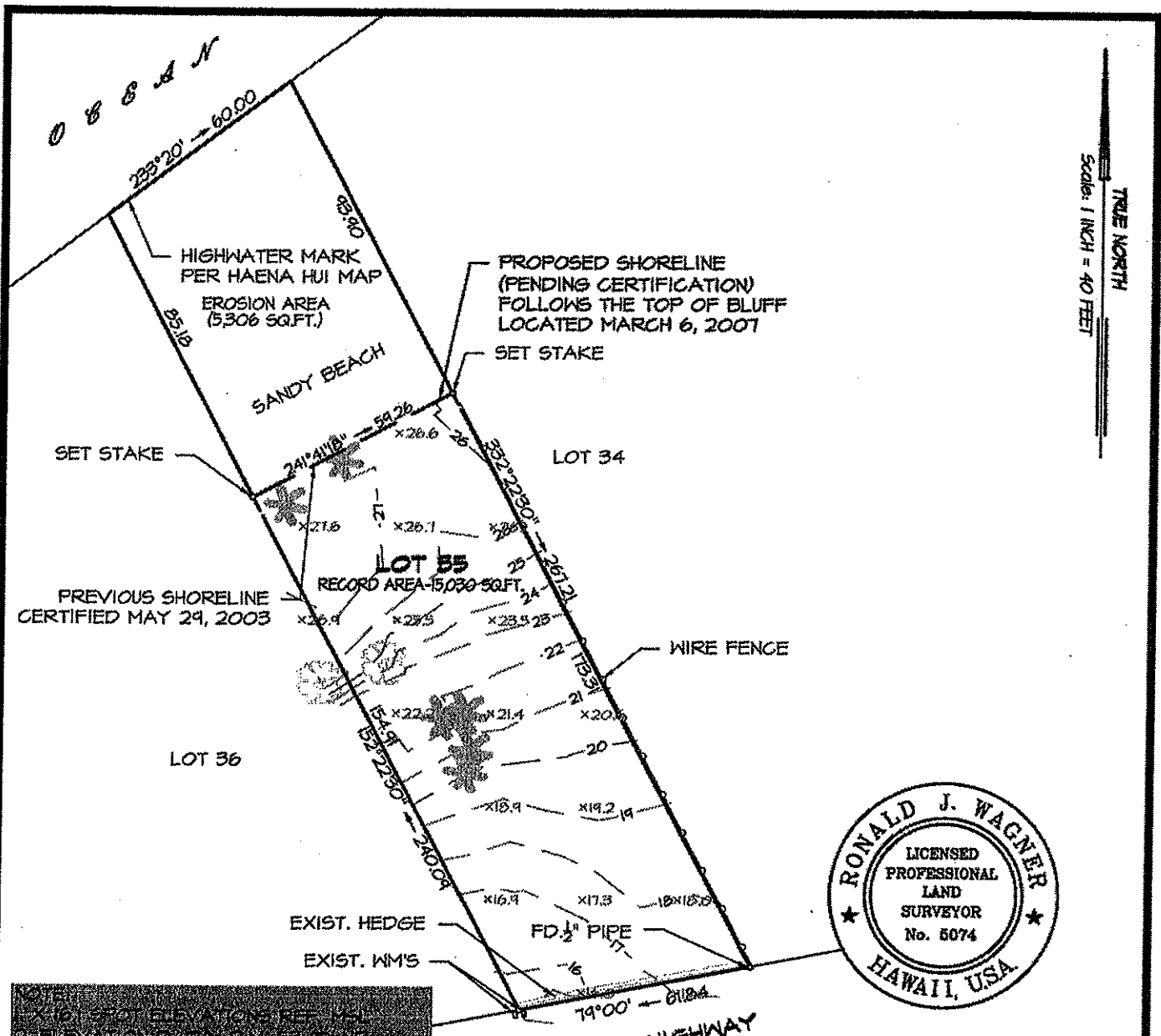
29-3-007  
Paeedonia  
Huan-Ling





Wagner Engineering Services, Inc.

P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



NOTE: ALL SPOT ELEVATIONS REF. MSL  
ELEVATION OF T.M.K. 5-9-05:27  
CIRCULAR AREA 25' X 25' IN LONG SLAB  
HAENA BEACH PARK ELEVATION 16.41



THIS MAP WAS PREPARED BY ME OR  
UNDER MY SUPERVISION

*Ronald J. Wagner*

RONALD J. WAGNER  
Licensed Professional Land Surveyor  
Certificate No. 5074 Exp. 4/30/08

# EG-ELEVATION CERTIFICATE

MORAGNE/BARTMESS SINGLE FAMILY RESIDENCE  
HAENA, KAUAI, HAWAII  
T.M.K. (4) 5-9-05:27

SHEET

8

EXHIBIT 8

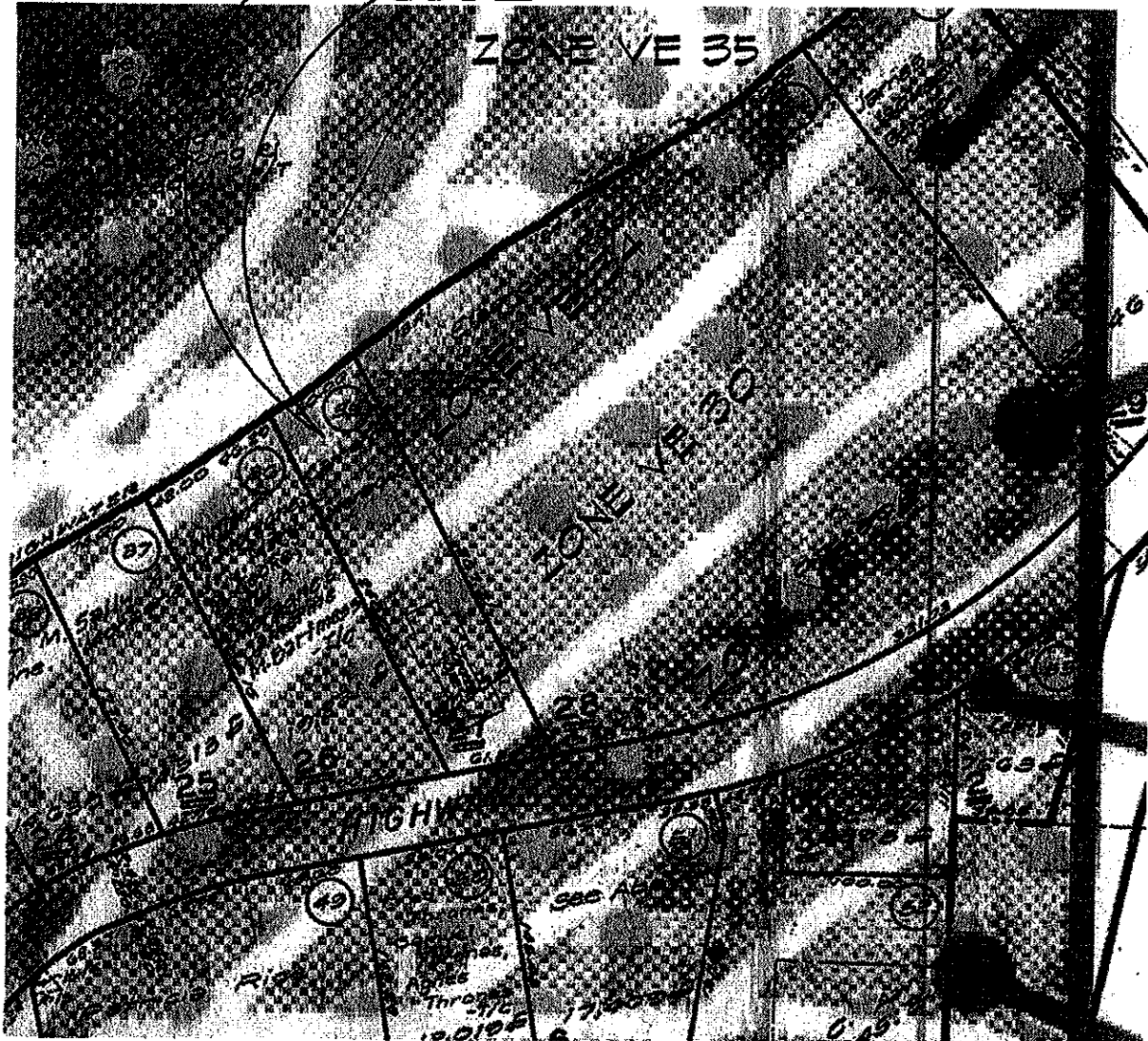
EXHIBIT 4



Wagner Engineering Services, Inc.  
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



## PROJECT SITE



DEVELOPMENT AREA OF SUBJECT PARCEL LIES WITHIN FLOOD ZONE VE 30  
HIGH HAZARD AREA SUSCEPTIBLE TO TSUNAMI INUNDATION  
PER FIRM MAP # 1500020030 E DATED SEPTEMBER 16, 2005

### FLOOD ZONE

MORAGNE/BARTMESS SINGLE FAMILY RESIDENCE  
HAENA, KAUAI, HAWAII  
T.M.K. (4) 5-9-05:27

SHEET

7

EXHIBIT 7

EXHIBIT 4

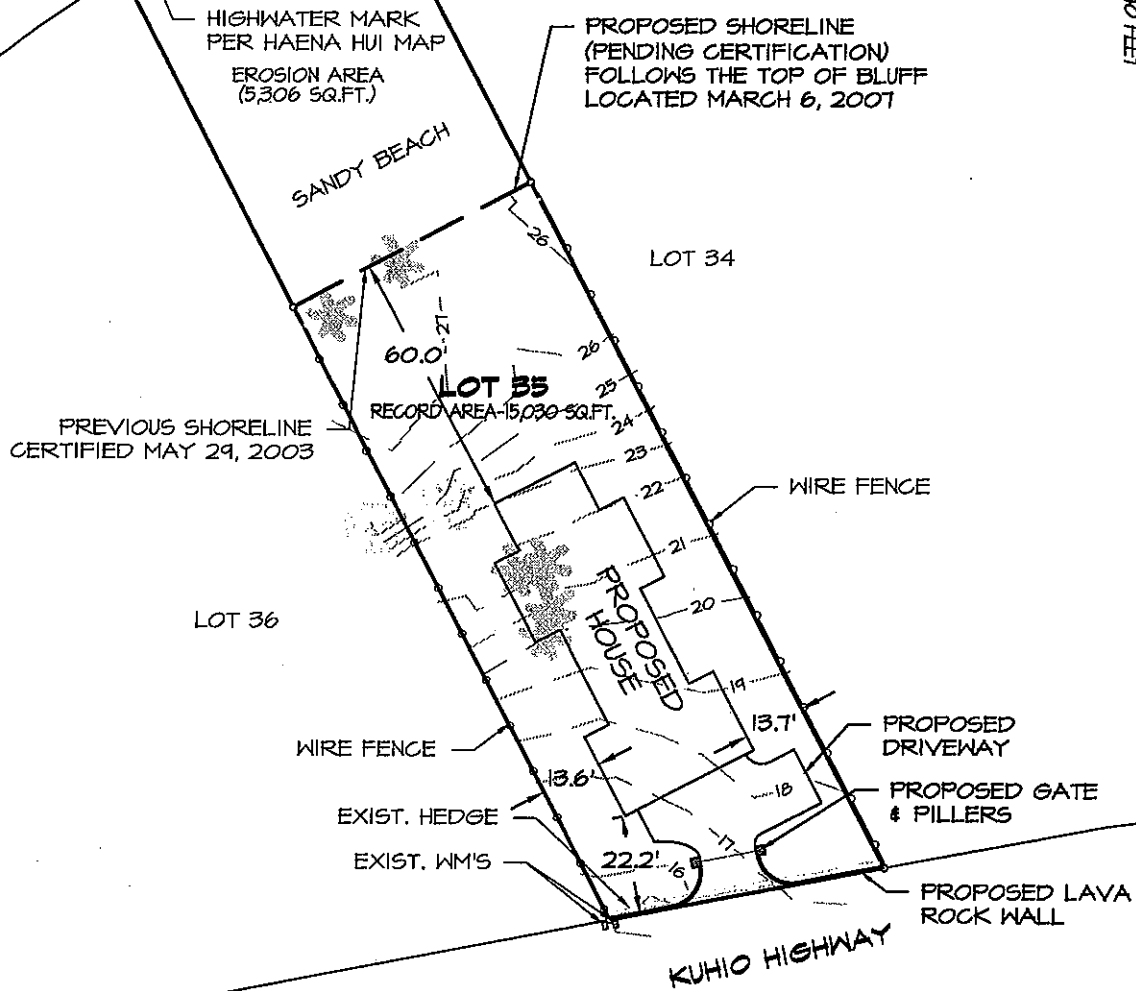


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O B E A N

TRUE NORTH  
Scale: 1 INCH = 40 FEET



40 0 40  
Graphic Scale In Feet

## SITE PLAN

MORAGNE/BARTMESS SINGLE FAMILY RESIDENCE

HAENA, KAUAI, HAWAII

T.M.K. (4) 5-9-05:27

SHEET

9

\* Originally proposed  
House footprint w/  
80 ft. setback

EXHIBIT 4

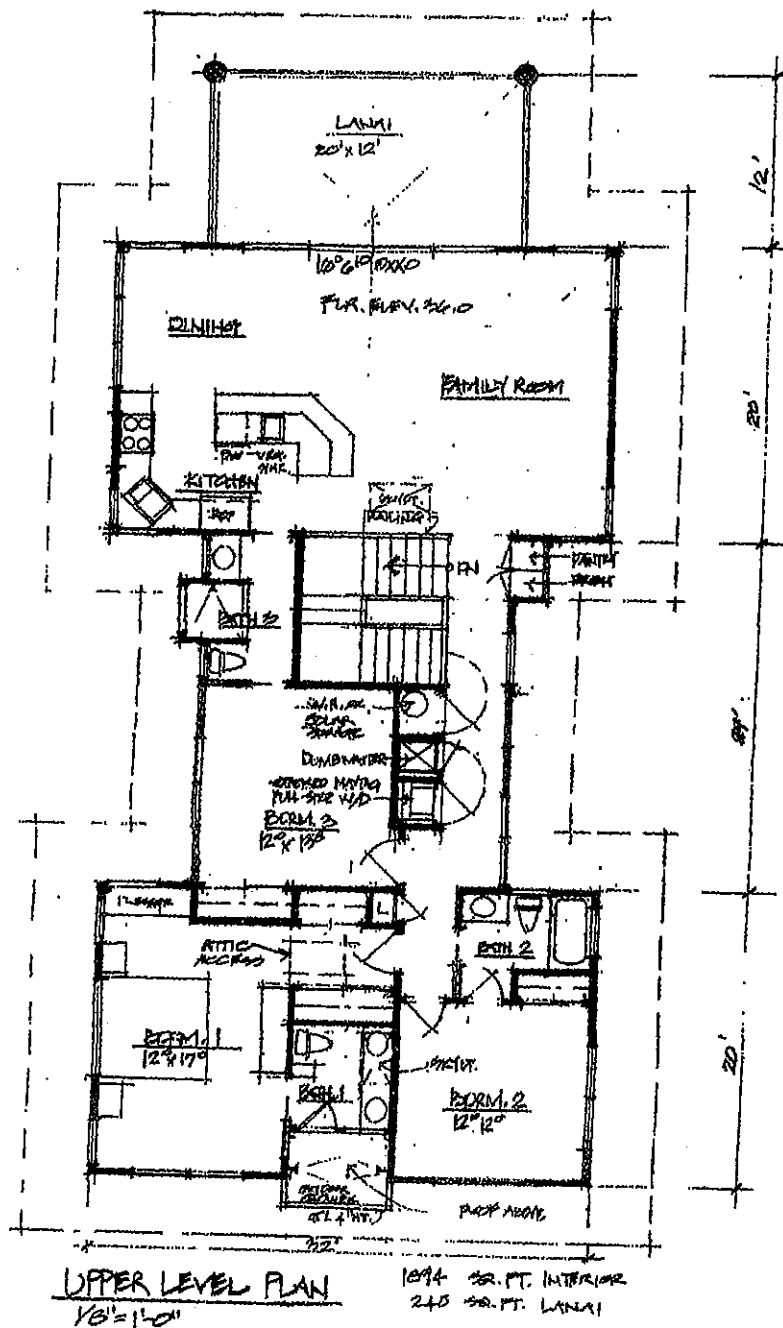
EXHIBIT 9



EXHIBIT 4







BARTMESS BEACH HOUSE  
AT LOT 35 OF HAENA HUI LANDS, KAUAI  
T.M.K. 5-9-05:27

TIM BRADLEY, ARCHITECT  
INNOVATIVE ISLAND ARCHITECTURE  
P. O. BOX 797, KAPAA, KAUAI, HI 96746  
Phone: (808) 821-9727 FAX: (808) 821-9726

THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION AND  
CONSTRUCTION OF THIS PROJECT  
WILL BE UNDER MY SUPERVISION  
SUPERVISION OF CONSTRUCTION  
AS DEFINED IN SECTION 1.201 OF  
THE RULES AND REGULATIONS OF  
THE BOARD OF PROFESSIONAL EN-  
GINEERS, ARCHITECTS AND SUR-  
VEYORS OF THE STATE OF HAWAII.

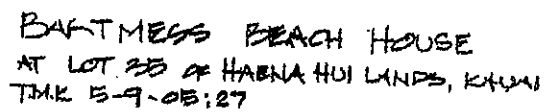


Timothy M. Bradley 12/8/03

Floor Plans — Upper Level  
MORAGNE/BARTMESS SINGLE FAMILY RESIDENCE  
HAENA, KAUAI, HAWAII  
T.M.K. (4) 5-9-05: 027

EXHIBIT 11

EXHIBIT 4



THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION AND  
CONSTRUCTION OF THIS PROJECT  
WILL BE UNDER MY SUPERVISION.  
SUPERVISION OF CONSTRUCTION  
AS DEFINED IN SECTION 17101 OF  
THE RULES AND REGULATIONS OF  
THE BOARD OF PROFESSIONAL EN-  
GINEERS, ARCHITECTS AND SUR-  
VEYORS OF THE STATE OF HAWAII.



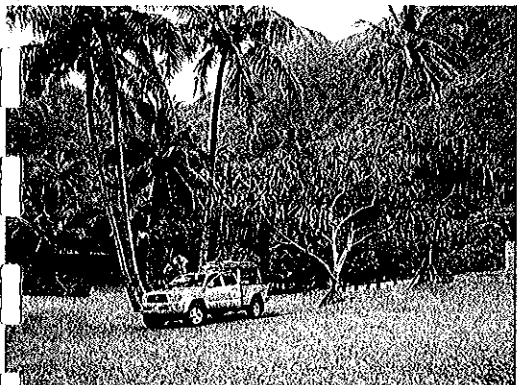
Timothy M. Bradley 12/5/03

T.M.K. (4) 5-9-05: 027

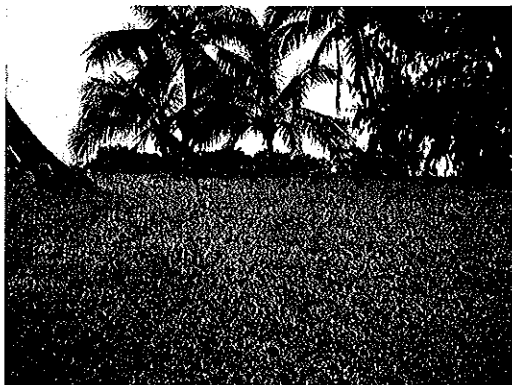
EXHIBIT 12

EXHIBIT 4





**Mauka View**



**Moragne/Bartmess 1**



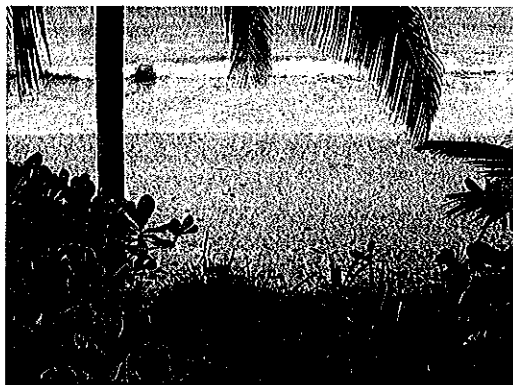
**Moragne/Bartmess 2**



**Shoreline Embankment**



**Top of Dune**



**Ocean View**



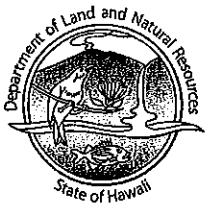
**Shoreline Marker**



**Shoreline Revetment**



**Shoreline Revetment**



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 27, 2008

Ref: KA-302

Mr. Ian K. Costa  
Director of Planning  
County of Kauai  
Planning Department  
4444 Rice Street  
Kapule Building, Suite A473  
Lihue, Kauai, Hawaii 96766-1326

Dear Mr. Costa,

Subject: Sandbag revetment for property situated at 7820 Kuhio Highway, Hanalei, Kauai, TMK (4) 5-9-005:027, Catherine Bartmess Trust, Owner.

The Department of Land and Natural Resources (Department) requests your assistance in determining the status of the sandbag revetment, located seaward of the proposed certified shoreline. A recent application for shoreline certification on the subject parcel requires we confirm the status of the permits. On December 5, 1996, the County of Kauai issued an emergency SMA permit, SMA (E)-97-03, approving temporary shoreline protection for TMK's (4) 5-9-005:023-027 including the property described above. The Department is concerned that the subject structure has surpassed the temporary emergency nature and is concerned with the adherence to conditions 2, 5 and 7 of the emergency SMA related to the shoreline and the temporary nature of the structure. Based on this the Department concludes that the revetment is now unauthorized, due to the expiration of the temporary approval granted by the emergency SMA permit.

The Department requests that the County provide a determination on the validity of the subject revetment and the emergency SMA permit. If the Department does not receive a determination by June 15th, 2008, the permit will be presumed to be invalid and the revetment as unauthorized.

If you have any questions, please contact Ian Hirokawa, Project Development Specialist, at (808) 587-0420. Thank you.

EXHIBIT 5

Very truly yours,

A handwritten signature in black ink, appearing to read "Morris M. Atta", with a long horizontal flourish extending to the right.

Morris M. Atta  
Administrator

cc: OCCL  
KDLO